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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,045	04/08/2004	Donnie R. Whetstone	24384.00	7334
37833	7590	09/12/2005	EXAMINER	
LITMAN LAW OFFICES, LTD PO BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215			LEWIN, ALLANA	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/820,045

Applicant(s)

WHETSTONE, DONNIE R.

Examiner

Allana Lewin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-15 and 20 is/are rejected.
- 7) ☒ Claim(s) 6-9, 16-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/8/2004.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claim 11 is objected to because of the following informalities: it appears that this claim is intended to depend from claim 10 rather than claim 1. Appropriate correction is required. Note that the examiner has interpreted the claim and its limitations as though it depends from claim 10.

Claim 8 is objected to because of the following informalities: the phrase "further comprising" appears redundantly in line 2 of the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Chesley (US Pat. No. 3,132,609).

Chesley discloses a shelf structure (note Figure 1) comprising a base with distal ends (see proximate lead lines 16, 18 and 32), a cross supports laterally extending equidistantly from each distal end that are configured to prevent tipping of the device (see proximate lead lines 20, 21, 24 and 26 and also note column 2, lines 12-14), an

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elongated tray (see proximate lead line 34), and connection elements that interconnect the base with the tray (see proximate lead lines 38, 40 and 44).

Regarding claim 4, Chesley discloses the elongated tray as a generally elongated rectangle having a surface as well as lengthwise and widthwise sides with ends (note Figure 1).

Regarding claim 5, Chesley discloses the elongated tray further comprising raised edges extending from each of the sides of the tray (note Figure 1 and see proximate lead line 42).

Regarding claims 12, 14 and 15, the method disclosed is capable of being performed with the Chesley device, as discussed above.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chesley in view of Saemisch (US Pat. No. 1,748,656).

Chesley, as discussed above, differs from the claimed invention in that it does not disclose pads, covers, or elevated attachments made from flexible and resilient material attached to the ends of each cross support.

Saemisch discloses a shelf structure comprising pads made from a flexible and resilient material attached to each support (see proximate lead line 16 and note column 2, lines 85-89) to help stabilize the structure and to protect the floor on which the structure is used from damage.

Based on the teaching of Saemish, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized pads attached to the supports in the Chesley device in order to increase the stability of the structure and prevent damage of the floor on which the structure is used.

Regarding claim 13, the method disclosed is capable of being performed by the Chesley device as modified by Saemish.

Claims 10, 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chesley in view of Hepp.

Chesley, as discussed above, differs from the claimed invention in that it fails to disclose a protective coating on the elongated tray.

Hepp discloses a tray assembly comprising a protective coating on the tray (column 6, lines 32-42) and particularly a protective coating that is similar to the protective lining used on truck beds (column 6, line 52) in order to increase the longevity and integrity of the device by protecting the tray from damage when in contact with liquids and other elements.

Therefore, based on the teaching of Hepp, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a

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protective coating in the Chesley device in order to protect it from wear, corrosion and other damage caused by exposure to various liquids and elements while in use.

Regarding claim 20, the method disclosed is capable of being performed by the Chesley device as modified by Hepp.

***Allowable Subject Matter***

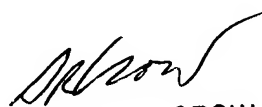
Claims 6-9 and 16-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571.272.5560. The examiner can normally be reached on Monday-Friday, 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571.272.4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AL  
9/2/2005

  
STEPHEN R. CROW  
PRIMARY EXAMINER  
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